

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JAMES RONALD BAKER, et al.,	:	Case No. 1:14cv00512
	:	(J. Dlott)
Plaintiffs	:	
	:	
vs.	:	
	:	
CITY OF PORTSMOUTH, OHIO, et al.,	:	
	:	
Defendants	:	

**ANSWER OF DEFENDANTS,
CITY OF PORTSMOUTH, OHIO, CHRISTOPHER S. SMITH, IN HIS OFFICIAL
CAPACITY AS HEALTH COMMISSIONER, CITY OF PORTSMOUTH, AND ANDREW
L. GEDEON, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF ENVIRONMENTAL
HEALTH, CITY OF PORTSMOUTH, OHIO, AND IN HIS INDIVIDUAL CAPACITY TO
PLAINTIFFS' COMPLAINT FOR DECLARATORY JUDGMENT, TEMPORARY
RESTRAINING ORDER, AND PRELIMINARY AND PERMANENT INJUNCTIVE
RELIEF (DOC. NO. 1) FILED JUNE 19, 2014**

The Defendants, City of Portsmouth, Ohio, Christopher S. Smith, in his official capacity as Health Commissioner, City of Portsmouth, and Andrew L. Gedeon, in his official capacity as Director of Environmental Health, City of Portsmouth, Ohio, and in his individual capacity (hereinafter "the City"), by and through counsel, for their Answer to Plaintiffs' Complaint (Doc. No. 1) filed herein, states as follows:

FIRST DEFENSE

1. Defendants deny the allegations of paragraph 1 of Plaintiff's Complaint.
2. Defendants deny the allegations of paragraph 2 of Plaintiffs' Complaint.
3. Defendants deny the allegations of paragraph 3 of Plaintiffs' Complaint.
4. Defendants deny the allegations of paragraph 4 of Plaintiffs' Complaint.
5. For want of knowledge sufficient to form a belief as to the truth thereof,
Defendants deny the allegations of paragraph 5 of Plaintiffs' Complaint.

6. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 6 of Plaintiffs' Complaint.

7. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 7 of Plaintiffs' Complaint.

8. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 8 of Plaintiffs' Complaint.

9. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 9 of Plaintiffs' Complaint.

10. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 10 of Plaintiffs' Complaint.

11. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 11 of Plaintiffs' Complaint.

12. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 12 of Plaintiffs' Complaint.

13. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 13 of Plaintiffs' Complaint.

14. Defendants admit the allegations of paragraph 14 of Plaintiffs' Complaint.

15. Defendants deny the allegations of paragraph 15 of Plaintiffs' Complaint.

16. Defendants deny the allegations of paragraph 16 of Plaintiffs' Complaint.

17. Defendants admit the allegations of paragraph 17 of Plaintiffs' Complaint.

18. Defendants admit the allegations of paragraph 18 of Plaintiffs' Complaint.

19. Defendants admit the allegations of paragraph 19 of Plaintiffs' Complaint.

20. Defendants deny the allegations of paragraph 20 of Plaintiffs' Complaint.

21. Defendants deny the allegations of paragraph 21 of Plaintiffs' Complaint.

22. Defendants deny the allegations of paragraph 22 of Plaintiffs' Complaint.

23. Defendants deny the allegations of paragraph 23 of Plaintiffs' Complaint.

24. In response to paragraph 24 of Plaintiffs' Complaint, admit that the Defendant, City of Portsmouth, Ohio acts under color of state law, but deny each and every remaining allegation of said paragraph.

25. In response to paragraph 25 of Plaintiffs' Complaint, admit that this Court has jurisdiction over claims of the type asserted in Plaintiffs' Complaint, but deny each and every remaining allegations and characterizations of the statutes contained in said paragraph.

26. Defendants admit the allegations of paragraph 26 of Plaintiffs' Complaint.

27. In response to paragraph 27 of Plaintiffs' Complaint, Defendants incorporate herein by reference its responses and averments set forth herein.

28. Defendants admit the allegations of paragraph 28 of Plaintiffs' Complaint.

29. Defendants admit the allegations of paragraph 29 of Plaintiffs' Complaint.

30. In response to paragraph 30 of Plaintiffs' Complaint, Defendants admit that said paragraph accurately quotes in part section 1361.08(C) of the Code regarding the requirements of a rental dwelling permit, but deny each and every other inference or allegation of said paragraph.

31. In response to paragraph 31 of Plaintiffs' Complaint, Defendants admit that said paragraph accurately quotes in part section 1361.08(C) of the Code regarding the requirements of a rental dwelling permit, but deny each and every other inference or allegation of said paragraph.

32. Defendants deny the allegations of paragraph 32 of Plaintiffs' Complaint.

33. Defendants deny the allegations of paragraph 33 of Plaintiffs' Complaint.

34. Defendants deny the allegations of paragraph 34 of Plaintiffs' Complaint.

35. Defendants deny the allegations of paragraph 35 of Plaintiffs' Complaint.

36. Defendants deny the allegations of paragraph 36 of Plaintiffs' Complaint.

37. In response to paragraph 37 of Plaintiffs' Complaint, Defendants admit that an owner may, under certain circumstances, have a rental permit suspended, but deny each and every remaining allegation and inference of said paragraph.

38. Defendants deny the allegations of paragraph 38 of Plaintiffs' Complaint.

39. Defendants deny the allegations of paragraph 39 of Plaintiffs' Complaint.

40. Defendants deny the allegations of paragraph 40 of Plaintiffs' Complaint.

41. In response to paragraph 41 of Plaintiffs' Complaint, Defendants admit the authenticity of Exhibit C, but deny each and every remaining allegation or inference of said paragraph.

42. In response to paragraph 42 of Plaintiffs' Complaint, Defendants admit the quoted items appear on the checklist of Exhibit D, but deny each and every remaining allegation or inference of said paragraph.

43. Defendants deny the allegations of paragraph 43 of Plaintiffs' Complaint.

44. Defendants deny the allegations of paragraph 44 of Plaintiffs' Complaint.

45. Defendants admit the allegations of paragraph 45 of Plaintiffs' Complaint.

46. In response to paragraph 46 of Plaintiffs' Complaint, Defendants admit that a rental permit, can under certain circumstances, equal \$50.00, but deny each and every remaining allegation of said paragraph.

47. Defendants deny the allegations of paragraph 47 of Plaintiffs' Complaint.

48. In response to paragraph 48 of Plaintiffs' Complaint, Defendants admit that the quoted material appeared in the newspaper cited in the footnote to the allegation, but deny each and every remaining allegation or inference of said paragraph.

49. In response to paragraph 49 of Plaintiffs' Complaint, Defendants admit that the edited quote appearing in paragraph 49 appeared in the newspaper, but deny each and every remaining allegation or inference of said paragraph.

50. Defendants deny the allegations of paragraph 50 of Plaintiffs' Complaint.

51. In response to paragraph 51 of Plaintiffs' Complaint, Defendants admit that Exhibit B was sent to various owners of property in the City, but specifically deny that Exhibit B amounts to a threat. By way of further answer, for want of knowledge sufficient to form a belief as to the truth thereof, deny each and every remaining allegation as to the Plaintiffs in this case.

52. In response to paragraph 52 of Plaintiffs' Complaint, Defendants admit that the edited quoted material appears in Exhibit D, but deny each and every remaining allegation or inference of said paragraph.

53. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 53 of Plaintiffs' Complaint.

54. Defendants deny the allegations of paragraph 54 of Plaintiffs' Complaint.

55. In response to paragraph 55 of Plaintiffs' Complaint, Defendants admit that the City of Portsmouth, Ohio has inspected certain of Plaintiffs' properties between December 2012 and April 2014, but deny each and every remaining allegation of said paragraph.

56. Defendants admit the allegations of paragraph 56 of Plaintiffs' Complaint.

57. Defendants deny the allegations of paragraph 57 of Plaintiffs' Complaint.

58. For want of knowledge sufficient to form a belief as to the truth thereof,
Defendants deny the allegations of paragraph 58 of Plaintiffs' Complaint.

59. Defendants deny the allegations of paragraph 59 of Plaintiffs' Complaint.

60. Defendants deny the allegations of paragraph 60 of Plaintiffs' Complaint.

61. For want of knowledge sufficient to form a belief as to the truth thereof,
Defendants deny the allegations of paragraph 61 of Plaintiffs' Complaint.

62. For want of knowledge sufficient to form a belief as to the truth thereof,
Defendants deny the allegations of paragraph 62 of Plaintiffs' Complaint.

63. Defendants admit the allegations of paragraph 63 of Plaintiffs' Complaint.

64. In response to paragraph 64 of Plaintiffs' Complaint, Defendants admit that each Plaintiff is statutorily obligated to provide tenants the benefits described in said paragraph, but for want of knowledge sufficient to form a belief as to the truth thereof, deny the allegation of Plaintiffs is contractually so obligated.

65. For want of knowledge sufficient to form a belief as to the truth thereof,
Defendants deny the allegations of paragraph 65 of Plaintiffs' Complaint.

66. For want of knowledge sufficient to form a belief as to the truth thereof,
Defendants deny the allegations of paragraph 66 of Plaintiffs' Complaint.

67. Defendants deny the allegations of paragraph 67 of Plaintiffs' Complaint.

68. In response to paragraph 68 of Plaintiffs' Complaint, Defendants incorporate herein by reference its responses and averments set forth herein.

69. Defendants deny the allegations of paragraph 69 of Plaintiffs' Complaint.

70. Defendants deny the allegations of paragraph 70 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

71. Defendants deny the allegations of paragraph 71 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

72. Defendants deny the allegations of paragraph 72 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

73. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 73 of Plaintiffs' Complaint.

74. Defendants deny the allegations of paragraph 74 of Plaintiffs' Complaint.

75. Defendants deny the allegations of paragraph 75 of Plaintiffs' Complaint.

76. In response to paragraph 76 of Plaintiffs' Complaint, Defendants incorporate herein by reference its responses and averments set forth herein.

77. Defendants deny the allegations of paragraph 77 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

78. Defendants deny the allegations of paragraph 78 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

79. Defendants deny the allegations of paragraph 79 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

80. Defendants deny the allegations of paragraph 80 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

81. Defendants deny the allegations of paragraph 81 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

82. Defendants deny the allegations of paragraph 82 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

83. Defendants deny the allegations of paragraph 83 of Plaintiffs' Complaint.

84. Defendants deny the allegations of paragraph 84 of Plaintiffs' Complaint.

85. Defendants deny the allegations of paragraph 85 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

86. Defendants deny the allegations of paragraph 86 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

87. Defendants deny the allegations of paragraph 87 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

88. Defendants deny the allegations of paragraph 88 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

89. Defendants deny the allegations of paragraph 89 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

90. Defendants deny the allegations of paragraph 90 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

91. Defendants deny the allegations of paragraph 91 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

92. Defendants deny the allegations of paragraph 92 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

93. Defendants deny the allegations of paragraph 93 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

94. Defendants admit the allegations of paragraph 94 of Plaintiffs' Complaint.

95. Defendants deny the allegations of paragraph 95 of Plaintiffs' Complaint.

96. Defendants deny the allegations of paragraph 96 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

97. In response to paragraph 97 of Plaintiffs' Complaint, Defendants state that Plaintiffs are operating closely regulated businesses and that the factors identified by the Supreme Court of United States in *New York v. Burger* apply, but by way of further answer deny any remaining allegations of fact contained in said paragraph.

98. In response to paragraph 98 of Plaintiffs' Complaint, Defendants state that to the extent the rental dwelling code does not specifically require a warrant, no such warrant is required. By way of further answer, deny any remaining allegations of said paragraph.

99. Defendants deny the allegations of paragraph 99 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

100. Defendants deny the allegations of paragraph 100 of Plaintiffs' Complaint.

101. Defendants deny the allegations of paragraph 101 of Plaintiffs' Complaint.

102. Defendants deny the allegations of paragraph 102 of Plaintiffs' Complaint.

103. Defendants deny the allegations of paragraph 103 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

104. Defendants deny the allegations of paragraph 104 of Plaintiffs' Complaint.

105. Defendants deny the allegations of paragraph 105 of Plaintiffs' Complaint.

106. Defendants deny the allegations of paragraph 106 of Plaintiffs' Complaint.

107. Defendants deny the allegations of paragraph 107 of Plaintiffs' Complaint.

108. In response to paragraph 108 of Plaintiffs' Complaint, Defendants incorporate herein by reference its responses and averments set forth herein.

109. Defendants deny the allegations of paragraph 109 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

110. Defendants deny the allegations of paragraph 110 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

111. Defendants deny the allegations of paragraph 111 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

112. Defendants deny the allegations of paragraph 112 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

113. Defendants deny the allegations of paragraph 113 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

114. Defendants deny the allegations of paragraph 114 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

115. Defendants deny the allegations of paragraph 115 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

116. Defendants deny the allegations of paragraph 116 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

117. In response to paragraph 117 of Plaintiffs' Complaint, Defendants admit that the quotation from the City of Portsmouth's Code is accurate, but to the extent this paragraph contains any factual allegation, such allegations are denied.

118. Defendants deny the allegations of paragraph 118 of Plaintiffs' Complaint.

119. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 119 of Plaintiffs' Complaint.

120. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 120 of Plaintiffs' Complaint.

121. For want of knowledge sufficient to form a belief as to the truth thereof, Defendants deny the allegations of paragraph 121 of Plaintiffs' Complaint.

122. Defendants deny the allegations of paragraph 122 of Plaintiffs' Complaint.

123. Defendants deny the allegations of paragraph 123 of Plaintiffs' Complaint.

124. Defendants deny the allegations of paragraph 124 of Plaintiffs' Complaint.

125. Defendants deny the allegations of paragraph 125 of Plaintiffs' Complaint.

126. Defendants deny the allegations of paragraph 126 of Plaintiffs' Complaint.

127. Defendants deny the allegations of paragraph 127 of Plaintiffs' Complaint.

128. In response to paragraph 128 of Plaintiffs' Complaint, Defendants incorporate herein by reference its responses and averments set forth herein.

129. Defendants deny the allegations of paragraph 129 of Plaintiffs' Complaint.

130. Defendants deny the allegations of paragraph 130 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

131. Defendants deny the allegations of paragraph 131 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

132. Defendants deny the allegations of paragraph 132 of Plaintiffs' Complaint because it contains only conclusory legal allegations and no allegation of fact.

133. Defendants deny the allegations of paragraph 133 of Plaintiffs' Complaint.

134. Defendants deny the allegations of paragraph 134 of Plaintiffs' Complaint.

135. Defendants deny the allegations of paragraph 135 of Plaintiffs' Complaint.
136. Defendants deny the allegations of paragraph 136 of Plaintiffs' Complaint.
137. Defendants deny the allegations of paragraph 137 of Plaintiffs' Complaint.
138. Defendants deny the allegations of paragraph 138 of Plaintiffs' Complaint.
139. Defendants deny the allegations of paragraph 139 of Plaintiffs' Complaint.
140. Defendants deny the allegations of paragraph 140 of Plaintiffs' Complaint.
141. Defendants deny the allegations of paragraph 141 of Plaintiffs' Complaint.
142. Defendants deny the allegations of paragraph 142 of Plaintiffs' Complaint.
143. Defendants deny the allegations of paragraph 143 of Plaintiffs' Complaint.
144. Defendants deny the allegations of paragraph 144 of Plaintiffs' Complaint.
145. Defendants deny the allegations of paragraph 145 of Plaintiffs' Complaint.
146. Defendants deny the allegations of paragraph 146 of Plaintiffs' Complaint.
147. Defendants deny the allegations of paragraph 147 of Plaintiffs' Complaint.
148. Defendants deny the allegations of paragraph 148 of Plaintiffs' Complaint.
149. Defendants deny the allegations of paragraph 149 of Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES
SECOND DEFENSE

1. For their second and further defense herein, these Defendants state that Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

2. For their third and further defense herein, these Defendants state that Plaintiffs lack standing to bring this action.

FOURTH DEFENSE

3. For their fourth and further defense herein, these Defendants incorporate their responses as above set forth and further state that all or part of Plaintiffs' claims are barred by the applicable statute of limitations, waiver, estoppel, failure of consideration, and/or laches.

FIFTH DEFENSE

4. For their fifth and further defense herein, these Defendants incorporate their responses as above set forth and further state that Plaintiffs have failed to exhaust their administrative remedies.

SIXTH DEFENSE

5. For their sixth and further defense herein, these Defendants incorporate their responses as above set forth and further state they are immune either through the doctrines of sovereign immunity or qualified immunity from the allegations set forth in Plaintiffs' Complaint.

SEVENTH DEFENSE

6. For their seventh and further defense herein, these Defendants incorporate their responses as above set forth and further state that at all times pertinent they acted in their capacity as representatives of the City of Portsmouth, Ohio and they undertook such duties and responsibilities in good faith thereby entitling them to immunity and barring Plaintiffs from recovering against these Defendants.

EIGHTH DEFENSE

7. For their eighth and further defense herein, these Defendants incorporate

their responses as above set forth and further state they are entitled to immunity pursuant to the Tenth and Eleventh Amendments to the United States Constitution.

NINTH DEFENSE

8. For their ninth and further defense herein, these Defendants incorporate their responses as above set forth and further state that to the extent Plaintiffs' Complaint alleges any claims under state law, Defendants are entitled to all immunities, defenses, limitations or damages and setoffs contained within Chapter 2744 of the Ohio Revised Code.

TENTH DEFENSE

9. For their tenth and further defense herein, these Defendants incorporate their responses as above set forth and further state Plaintiffs' claim for punitive damages is barred, in whole or in part, by the substantive and procedural safeguards guaranteed to these Defendants by the due process clauses of Constitutions of the United States and the State of Ohio. Plaintiffs' claim for punitive damages is further barred because the imposition of such damages is not rationally related to, or is grossly excessive in relation to, legitimate state interests.

WHEREFORE, having fully answered, Defendants, City of Portsmouth, Ohio, Christopher S. Smith, in his official capacity as Health Commissioner, City of Portsmouth, and Andrew L. Gedeon, in his official capacity as Director of Environmental Health, City of Portsmouth, Ohio, and in his individual capacity, pray that Plaintiffs' Complaint be dismissed at their costs and that they take nothing thereby.

/s/ John W. Hust

Lawrence E. Barbieri, Ohio Bar No.: 0027106

John W. Hust, Ohio Bar No.: 0027121

Trial Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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/s/ John W. Hust

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